Filed 2/17/05 Jimelle W. v. Superior Court CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JIMELLE W.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO COUNTY,

Respondent,

FRESNO COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Real Party In Interest.

F046609

(Super. Ct. No. 02CEJ300198-1)

O P I N I O N

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Martin Suits, Commissioner.

George Cajiga, Public Defender, and Elaine Henderson, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Dennis A. Marshall, County Counsel, and Howard K. Watkins, Deputy County Counsel, for Real Party In Interest.

*Before Levy, Acting P.J., Gomes, J., and Dawson, J.

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Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 38) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing[1] as to her daughter D. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

Petitioner suffers from a severe mental illness, for which she requires medication. However, she has a history of not taking her medication, resulting in periods of instability severe enough, as in this case, to require hospitalization. Her mental illness also impacts her ability to care for herself and her children. At the time of the instant dependency proceedings, petitioner had a teenage son who was also removed from her custody because of her mental illness. He was being raised by his maternal grandmother.

These dependency proceedings arose in August 2002 after petitioner was found walking in the middle of a street holding then six-month-old D. in her arms. Petitioner had D.'s pacifier in her mouth and was oblivious to the traffic, including several cars that almost hit her. Petitioner was involuntarily committed to a psychiatric facility and D. was taken into protective custody by the Fresno County Department of Children and Family Services (department).

The department filed a dependency petition on D.'s behalf (§ 300, subd. (b)) and placed her in foster care. The juvenile court detained D. and ordered supervised visitation. At the dispositional hearing, the court sustained an amended petition, adjudged D. a dependent child of the court and ordered petitioner to complete a parenting course and undergo a mental health evaluation and follow any recommended treatment. The court also gave the department discretion to advance to unsupervised visitation as

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

long as petitioner was participating in services and taking her medication. The court set the six-month review hearing for May 16, 2003.

In October 2002, petitioner completed a mental health assessment. The mental health assessor reported that petitioner was under the treatment of a licensed clinical social worker for individual therapy and a psychiatrist for medication management. The assessor recommended petitioner continue under their care.

In its six-month status review, the department reported that petitioner completed a parenting course. However, she was homeless and had not kept in contact with the department. As a result, the caseworker was unable to obtain information regarding petitioner's progress in treatment. The department also reported that visitation was positive but petitioner reportedly missed more visits than she attended. Given petitioner's lack of progress, the department recommended the court terminate reunification services.

Petitioner contested the department's recommendation and the review hearing was continued and conducted on July 22, 2003. The court continued reunification services and ordered the department to refer petitioner and D. for parent/child therapy. The court set the 12-month review hearing for January 21, 2004.

In its 12-month status review, the department again recommended that the court terminate reunification services. Although, petitioner's psychiatrist reported she was taking her medication, her therapist reported that she attended therapy sporadically. Her last therapy session occurred in early November 2003.

On February 25, 2004, the court conducted a contested 12-month status review hearing. The court found the department provided reasonable services as to the parenting and therapy components of petitioner's case plan but unreasonable services as to the parent/child therapy because the department did not refer petitioner for the service. The court ordered the department to make the referral, continued services and set a review hearing for August 25, 2004.

In an interim report dated June 4, 2004, the department informed the court that petitioner's therapist, weary of petitioner's failure to attend therapy sessions, advised her to schedule appointments on an as needed basis. However, on May 17, 2004, petitioner began individual therapy with grief counselor Henry J. Venter, Ph.D. to whom she was referred by her clergy after the death of her father. Dr. Venter informed the caseworker petitioner consistently attended her therapy sessions and appeared motivated to address her problems. He estimated her treatment would require at least 12 months of weekly sessions. He could not comment on the feasibility of unsupervised visitation given his lack of information on petitioner's background and the limited time he had treated her. The department also reported that petitioner and D. were assessed for parent/child therapy but that the therapist concluded it was not indicated.

The department explained in its interim report that it was difficult to obtain information on petitioner's mental health status because petitioner sought services on her own rather than accepting mental health services offered through the department. The department also explained that it was not comfortable advancing to unsupervised visitation without a recommendation by a psychiatrist or psychologist and that no one was willing to provide such a recommendation. The department recommended the court terminate reunification services and refer the case for permanency planning.

In its status review dated August 25, 2004, the department restated its recommendation that the court terminate reunification services. The department reported that petitioner was taking her medication and participating in weekly therapy sessions with Dr. Venter. The department further reported that, at its recommendation, petitioner enrolled in another parenting class. She also engaged in regular and appropriate visitation with D. and, based on her progress in therapy, Dr. Venter recommended in a letter dated August 3, 2004, that the department begin unsupervised visitation. However, the department was not convinced petitioner had benefited from the services she

received. The department found her resistant to change and to participation in her case plan other than grief therapy.

The status review hearing was continued and conducted on October 22, 2004. Petitioner's position at trial was that she complied with her case plan but was denied reasonable services based on the premise that the department's failure to coordinate with Dr. Venter prevented petitioner from progressing to unsupervised visitation. The court accepted a stipulated offer of proof that petitioner and D. enjoyed regular and appropriate visitation and that petitioner was scheduled to complete her second parenting class in November 2004.

Dr. Venter testified that he recommended unsupervised visitation for petitioner and D. because he saw nothing in petitioner's functioning that caused him to believe petitioner would be detrimental to D. and because the reports of their supervised visitation was positive. However, he qualified his recommendation as "guarded" after acknowledging on cross-examination that he had never seen D. or observed petitioner with her.

Petitioner's caseworker testified that by the time she received Dr. Venter's recommendation for unsupervised visitation, the department was pursuing termination of reunification services and a permanent plan of adoption. Consequently, she did not arrange unsupervised visitation or attempt to arrange for Dr. Venter to observe petitioner with D. She further testified that D. recognized petitioner as someone she visited with for several hours a week but not someone with whom she was bonded. Finally, she testified that even if the case were not at the 18-month review and adoption were not the permanent plan, she still would not have recommended unsupervised visitation. She would have recommended third-party supervision by D.'s maternal grandmother.

After argument, the court terminated reunification services and set the matter for permanency planning. This petition ensued.

DISCUSSION

I. *Petitioner Was Provided Reasonable Services.*

Petitioner argues that by June 2004, she had satisfied the preconditions for unsupervised visitation by participating in services and taking her medication. Therefore, she argues, the department's subsequent refusal to arrange unsupervised visitation was unreasonable and the juvenile court erred in finding she was provided reasonable services. In reviewing the reasonableness of the services provided, we view the evidence in a light most favorable to the respondent, indulging in all reasonable and legitimate inferences to uphold the judgment. (*In re Ronell A*. (1996) 44 Cal.App.4th 1352, 1361-1362.) If substantial evidence supports the juvenile court's finding, we will affirm it. (*Ibid*.)

Viewing the evidence in favor of the juvenile court, we conclude substantial evidence supports its finding petitioner was provided reasonable services. Contrary to petitioner's assertion, the department was not required to provide unsupervised visitation. Rather, the department was authorized to do so if petitioner met certain conditions. One of those conditions (participating in services) entailed individual therapy, which petitioner did not attend on a regular basis until May 17, 2004, when she attended her first session with Dr. Venter.

Moreover, the department had no reason to believe that D. would be safe in petitioner's care without departmental supervision. Despite Dr. Venter's recommendation, petitioner had been in his care for only several months and Dr. Venter had not observed petitioner and D. together. Given petitioner's history of instability, the department's unwillingness to progress to unsupervised visitation was understandable.

Finally, by the time Dr. Venter recommended unsupervised visitation, reunification had exceeded the 18-month statutory limitation and the department was pursuing a permanent plan of adoption. At that point, according to the caseworker's testimony, the standard practice would be to decrease rather than increase visitation.

Under these circumstances, we conclude it was not unreasonable for the department to continue to supervise visitation and that petitioner received reasonable reunification services.

II. ***The Court Properly Terminated Reunification Services.***

Having concluded petitioner was provided reasonable services, we reject petitioner's argument the juvenile court abused its discretion in not continuing reunification services beyond the 18-month review hearing. In support of her argument, petitioner cites *In re Daniel G*. (1994) 25 Cal.App.4th 1205 (*Daniel G*.) in which the court reversed the juvenile court's order terminating appellant's parental rights. (*Id*. at p. 1217.) In *Daniel G*., the juvenile court concluded that appellant was denied reasonable services from the 6-month review to the 18-month review period.[2] (*Id*. at p. 1209.) Despite that, the juvenile court believed it did not have discretion to continue reunification beyond the 18-month review period and terminated reunification services. (*Ibid*.) In reversing, the *Daniel G*. court stated, "[I]n order to meet due process requirements at the termination stage, the [juvenile court] must be satisfied reasonable services have been offered during the reunification stage." (*Id*. at pp. 1215-1216.) The court concluded the juvenile court had the discretion to continue reunification services beyond the 18-month review hearing and its failure to exercise that discretion required reversal. (*Id*. at p. 1216.)

We find the facts and therefore the holding in *Daniel G*. inapplicable to this case. The instant juvenile court found petitioner was provided reasonable services during the

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[2] The juvenile court held a review hearing nine months after the six-month review hearing and found the social services department had not made reasonable efforts to reunite appellant with her son since the six-month review hearing. (*Daniel G*., *supra*, 25 Cal.App.4th at p. 1208.) Three months later, the court conducted the 18-month review hearing at which it again found the department had not provided reasonable services. (*Id*. at p. 1209.) Nevertheless, the court terminated reunification services and set a section 366.26 hearing. (*Ibid*.)

period under review and we have affirmed that finding. Moreover, there is no evidence the juvenile court did not understand its discretionary power to extend reunification services beyond the 18-month review period.

Further, aside from departmental failure to offer reasonable services, petitioner does not argue either of the other two exceptions warranting an extension of reunification services beyond the 18-month limit; i.e., (1) no reunification plan was ever developed for the parent, or (2) the best interests of the child would be served by a continuance of the 18-month review hearing. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167.) In light of the foregoing, we conclude the juvenile court properly terminated reunification services. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.